

Procedures for establishing the tax-exempt status of charitable organizations created or organized under the laws of Canada or Honduras and with respect to the deductibility of contributions thereto pursuant to tax conventions entered into between those countries and the United States.

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to set forth the procedure to be followed with respect to (1) establishing the tax-exempt status of charitable organizations created or organized under the laws of Canada or Honduras and (2) the deductibility of contributions thereto pursuant to tax conventions entered into between those countries and the United States.

SEC. 2. BACKGROUND.

.01 Generally, under section 170 of the Internal Revenue Code of 1954, contributions made by a United States taxpayer to an organization created or organized in a foreign country are not allowed as an income tax deduction even though the organization may meet all the tests of a charitable organization except the place of organization.

.02 The tax convention between the United States and Canada, effective January 1, 1941, T.D. 5206, C.B. 1943, 526, contains a provision granting the same tax exemption to certain nonprofit organizations created in Canada which applies to nonprofit organizations organized in the United States. The supplementary income tax convention between the United States and Canada, effective for years beginning on or after January 1, 1957, C.B. 1957-2, 1014, contains a new provision allowing a deduction, subject to certain limitations, for contributions to a charitable organization created or organized in Canada if such contributions would have been allowable as a deduction had the organization been organized in the United States. The organization must meet the requirements of the exemption laws of both countries. In other words, contributions to charitable organizations created or organized in Canada and meeting the requirements for exemption under the income tax laws of Canada qualify for deductions for United States income tax purposes if such organizations, had they been created or organized in the United States, meet the requirements for exemption under the income tax laws of the United States. In addition to the limitations on the amount of the deduction imposed by section 170 of the Code, such deduction may not exceed the amount allowed as a deduction under the Canadian law computed as though the taxpayer's taxable income (in the case of a corporation) or adjusted gross income (in the case of an individual) from sources in Canada was his aggregate income.

.03 A similar provision is contained in the United States-Honduras income tax convention, effective for taxable years beginning on or after January 1, 1957, C.B. 1957-2, 1033. However, this provision specifically states that in computing the tax liability

of any taxpayer for any taxable year by one of the contracting States, there shall be treated as a charitable contribution any contribution made by such taxpayer to a religious, charitable, scientific, literary or educational organization created under the laws of the other State if (A) contributions to such organization would qualify for a deduction under the laws of the former State had such organization been created under the laws of such former State or political subdivision thereof, and (B) contributions to such organization would qualify for a deduction under the laws of such other State. However, in addition to the limitations under section 170, the convention with Honduras limits the amount of the deduction to the amount which would have been allowed as a deduction had the income from sources in Honduras constituted the entire income of the taxpayer for the taxable year.

.04 It should be noted that although in both tax conventions it is necessary to compute the income from sources in the foreign country to apply the deduction limitation, the Canadian percentage limit is applicable in the one and the United States percentage limit is applicable in the other.

SEC. 3. PROCEDURE.

.01 Under established procedures, an organization organized or created in a foreign country and which claims exemption from United States income tax with respect to income from sources within the United States, or claims a charitable status for United States gift or estate tax purposes, is required to file an appropriate exemption application, in duplicate, together with supporting documents, so that a ruling may be issued as to whether the organization meets the requirements prescribed in the applicable United States exemption statutes. The regulations applicable to section 501 of the Code set forth the form of exemption application required.

.02 In those cases where an organization is created or organized under the laws of Canada or Honduras and before it is determined whether a donor is entitled to a deduction under the above referred to tax convention provisions, the organization is required to establish a charitable status for United States income tax purposes in the manner outlined in section 3.01 above. The application submitted by such organization should also be accompanied by a certified copy of the ruling letter issued to it by the country under whose laws it was created or organized and which ruling holds, in effect, that contributions to it qualify for an income tax deduction under the laws of such country.

.03 Unless a specific request is made for a ruling as to the deductibility of contributions to the organization, such a ruling will not be issued in the matter. In those cases where the application for exemption from United States income tax with respect to income from sources within the United States contains a request as to the income tax deductibility of contributions and the organization is found to qualify as a charitable organization within the meaning of the convention provisions, the organization will be so advised. However, a determination of the amount to be treated as a charitable contribution on the United States income tax return of a particular donor is within the jurisdiction of the District Director of Internal Revenue having charge of the returns filed.

.04 Applications for rulings as to the exempt status of a foreign organization having no principal place of business, or principal office or agency, in any internal revenue district in the United States should be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C. Applications for rulings as to the exempt status of all other foreign organizations should be filed with the District Director of Internal Revenue, Baltimore, Maryland.

.05 Under Internal Revenue Service policy, those organizations created or organized in Canada or Honduras contributions to which are considered allowable deductions pursuant to tax convention provisions, are not named in the Cumulative List of organizations contributions to which are deductible under section 170 of the Code, IRS Publication No. 78.

SEC. 4. INQUIRIES.

Inquiries related to this Revenue Procedure should refer to the number thereof and be addressed to the Commissioner of Internal Revenue, Attention T:R:EO, Washington 25, D.C.